Office - Supreme Court, U.S.
FILED
JUL 23 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-523

IN THE

Supreme Court of the United States

October Term, 1982

CONTAINER CORPORATION OF AMERICA,
Appellant,

v.

FRANCHISE TAX BOARD
Appellee.

On Appeal From the Court of Appeal of California, First Appellate District

Brief of The Coca-Cola Company as *Amicus Curiae* In Support of Appellant

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INTRODUCTORY STATEMENT

This brief is submitted by The Coca-Cola Company as *amicus curiae* in support of the appellant in the above-captioned case. Written consents of Appellant and Appellee are attached to this brief.

OPINIONS BELOW

The Opinion of the Court of Appeal of California, First Appellate District, is reported at 117 Cal. App. 3rd 988, 173 Cal. Rptr. 121 (1981); the memorandum opinion and judgement of the California Superior Court are not reported.

INTEREST OF *AMICUS CURIAE*

The Coca-Cola Company files income tax returns in forty-one states, undergoes frequent state income tax audits, and has been assessed by six states on a worldwide unitary basis. The Coca-Cola Company falls prey to worldwide unitary (or worldwide combination) assessments because The Coca-Cola Export Corporation, a subsidiary of The Coca-Cola Company, has itself subsidiaries which manufacture and/or sell Coca-Cola in more than 140 nations. The outcome of this case will directly affect The Coca-Cola Company's tax liability in the several states already using worldwide unitary taxation. Other states are considering the imposition of worldwide unitary taxation but are awaiting clarification of the method's constitutionality.

Although this Court has previously considered the concept of a unitary business on a worldwide scale, the constitutionality of using the three-factor formula to apportion worldwide income has never before been presented to this Court. The Coca-Cola Company believes this method of taxation violates both the Due Process and Commerce Clauses of the Constitution. The Coca-Cola Company has a direct interest in this case because it has been victimized by State violations of Constitutional guarantees and State interference with the authority of the Federal Government to conduct foreign relations.

SUMMARY OF ARGUMENT

Worldwide unitary taxation (or worldwide combination) is a method of taxing income in which, once a multinational group of corporations is determined to be a unitary business, worldwide business income is attributed to a state using a standard factor apportionment formula. This method of taxation, though approved by this Court for businesses conducted within the borders of the United States, is unconstitutional when used on a worldwide basis. Worldwide unitary taxation violates the Due Process and Commerce Clauses of the Constitution.

States frustrate a taxpayer's right to due process both in the way businesses are determined to be unitary and in the use of formulary

apportionment in attributing income to a state. States have consistently used a broad and vague definition of unitary business to allow the combining of discrete business enterprises. This unitization of businesses, sometimes on the basis of unity of ownership alone, has permitted states to draw into their tax jurisdiction unrelated income from outside their borders. Because formulary apportionment is applied to income earned in areas economically distinct from the United States, income is greatly distorted. These distortions allow states to tax income which is totally unrelated to the economic activity conducted within state borders.

Worldwide unitary taxation violates the Commerce Clause because states prevent the Federal Government from presenting a unified national approach in international commercial relations. Additionally, international multiple taxation occurs, a situation condemned by this Court. Foreign countries have decried the states' use of worldwide unitary taxation and have threatened retaliation.

Worldwide unitary taxation offends the Constitution of the United States by effectively denying taxpayers their right to due process and by frustrating international economic policy of the Federal Government. This Court should declare worldwide unitary taxation unconstitutional.

ARGUMENT

Due Process

In return for the protections afforded their businesses, interstate operations owe the states a fair compensation. Although states are virtual sovereigns in designing their systems of taxation, the Due Process Clause of the Fourteenth Amendment imposes two limitations on state authority to tax; first, a "minimal connection" must exist between the taxing state and the taxpayer's interstate activities; and, second, the income attributed to the state must bear some rational relationship to the intra-state values of the business. *Mobil Oil Corp.* v. *Commissioner of Taxes of Vermont*, 445 U.S. 425 (1980). Due process requirements are satisfied when a state taxes income from a unitary business partially conducted within its borders. Constituent corporations of a unitary business are substantially interdependent, creating a "flow of international trade." *F. W. Woolworth Co.* v. *Taxation and Revenue Department of the*

State of New Mexico, _____ U.S. _____, 50 U.S.L.W. 4957, at 4961 (1982). An increasing number of states are violating the rational relationship test by irrational impositions of the worldwide unitary method of taxation. States violate due process guarantees both by irrationally determining which businesses are unitary and by using an apportionment formula which produces constitutionally impermissible misattributions of income.

This Court has issued guidelines for determining when a business is unitary in *ASARCO, Inc.* v. *Idaho State Tax Commission*, 50 U.S.L.W. 4962; and *F. W. Woolworth Co.*, 50 U.S.L.W. 4957. States may apportion dividend income only when the ownership of the underlying stock occurs in the context of a unitary business. States can no longer find business income anytime a disputed item "contributes to" the taxpayer's business since all corporate income in some way "contributes to" the business. *ASARCO, Inc.*, 50 U.S.L.W. at 4967; *F. W. Woolworth Co.*, 50 U.S.L.W. at 4959. These decisions, to some degree, will curb the unbridled expansion of unitary treatment which has been eroding constitutional guarantees of due process. The extent of this erosion is perhaps best shown by the Montana Supreme Court's decision in *Ward Paper Box* v. *Department of Revenue*, 638 P.2d 1053 (1982), in which the Court found a paper container business to be unitary with a cattle-raising business. The cattle-raising business, a losing venture, was located in Montana. The only way Montana could tax the profitable paper container business was by somehow declaring the two businesses unitary. The Court seized three facts to justify the state's taxation of extra-territorial income: money from the paper container business was used to keep the cattle business afloat, a central accounting function served both businesses, and the cattle business "contributed to" the taxpayer's overall solvency by providing a federal tax deduction. This decision surpasses even the standards for a unitary business proposed by counsel for the California Franchise Tax Board.

Two longtime advocates of unitary treatment, Frank M. Keesling and John S. Warren, once discussed the unitary nature of a

hypothetical cotton company which acquired a copper mine. Even though the copper mine operated at a loss, and depended upon the profitable cotton business for its continued operation; and, despite common ownership, management and use of facilities, Messrs. Keesling and Warren declared that this business would not be unitary. Rather, the taxpayer would be engaged in two separate lines of business. The loss from the copper mine, they urged, should be apportioned to the states in which that *separate* unitary business was conducted. Keesling and Warren, *The Unitary Concept in the Allocation of Income*, 12 Hastings L.J. 42, at 54-55 (1960). The Montana Supreme Court, then, should have found Ward Paper Box engaged in two businesses, and taxed each business based on its individual connections with the State.

The standards set by this Court in *ASARCO, Inc.*, 50 U.S.L.W. 4962, and *F. W. Woolworth Co.*, 50 U.S.L.W. 4957, allow the same conclusion reached by Messrs. Keesling and Warren. Even though this Court has solved some problems precipitated by unitary taxation, the peculiar problems attending worldwide unitary taxation remain unresolved. With worldwide unitary taxation, a state, after finding that a multinational group of corporations is a single unitary business, compels that business to file its tax returns using the worldwide combination method of reporting. A worldwide business income figure before foreign taxes is determined, and then apportioned, using the particular state's factor apportionment formula. Container Corporation of America presents this Court with the opportunity to judge the constitutionality of the worldwide apportionment method. *Amicus* urges this Court to make that determination and not to conclude this case with a determination of Container Corporation's unitary status. A finding by this Court that Container Corporation of America is a unitary business does not determine the constitutionality of California's worldwide factor apportionment.

The states' overbroad definition of a unitary business has provided only one source of due process violations. States further undermine taxpayers' constitutional rights when they use the standard three-factor formula in apportioning worldwide income. No rational

relationship binds the income a state seeks to tax through worldwide unitary taxation to the intra-state activities of the taxpayer. The required rational relationship cannot exist because substantive economic differences separate the United States from the countries in which the income is earned. These economic differences effectively eliminate factor apportionment as a rational method of attributing income to a state.

Unlike Mobil Oil Corporation, *Amicus* does not now argue that a foreign source alone places income beyond the realm of state taxation. Rather, *Amicus* asserts that business operations in a foreign jurisdiction are subject to profitability factors so different from those in the United States that foreign income is earned in an economically distinct enterprise. Lumping such income before taxes together with domestic income in a single or multi-factor formula cannot produce a fair apportionment. Instead, income attribution becomes so distorted that no rationale supports the formula's use.

The seminal factual assumption underlying the viability of formula apportionment is that the United States enjoys economic consistency within its borders. This economic consistency means that the three-factor formula can assign to each state a more or less fair share of a taxpayer's income for taxation.

Economic inconsistency, however, is the hallmark of the world economy. Sales, property, and payroll change value and substance from country to country. Rather than smoothing out regional differences, as occurs in the United States, time exacerbates them. These economic inconsistencies skew the results of the three-factor formula. One glaring example of a distorting economic difference between the United States and a foreign country is the difference in wages between the United States and Japan. Labor in Japan's large industries enjoys a fringe benefit for which American labor is just now beginning to bargain – permanent employment. Permanent employment uniquely symbolizes Japanese industrial relations. Permanent employment means that an employee enters a company after graduation, is trained at the company and remains there until retirement at age 55. R. Cole, *Work, Mobility, and Participation*, at 11 (1979). Because employees will remain with a company for life,

employers invest heavily in training and impose the cost of that training on younger workers through lower wages. Permanent employment lessens the importance of financial rewards for labor and increases the importance of intangible rewards. Conversely, in the United States, a worker's reward is reflected chiefly in salary. R. Cole, *Work, Mobility, and Participation*, at 141, 255 (1979). The value of permanent employment as a fringe benefit defies translation into a dollar figure; yet, permanent employment is a very real constituent of a Japanese worker's wage. Not accounting for permanent employment in the wage factor distorts the effect of Japanese wages in apportioning income earned in Japan.

In addition to permanent employment, Japanese workers enjoy subsidized housing as part of labor's compensation. If subsidized housing is included when calculating Japanese "wages", the Japanese worker would have earned more than an American worker as early as 1978. E. Vogel, *Japan as Number One: Lessons for America*, at 15 (1979).

These two substantial differences in methods of compensation make the "wage" factor in the standard three-factor formula impossible to calculate. Coupled with fluctuating currency exchange values, assigning the proper value to the wage factor for Japan alone would be an accountant's nightmare. When one considers that most foreign countries have economic and accounting customs different from those in the United States, the reliability of a simplistic three-factor formula in apportioning income is destroyed. Further, these differences make each foreign country economically distinct from the United States.

General economic differences among the nations eliminate the possibility of a rational relationship between income earned abroad and activities conducted within a state. Individual corporations also possess unique characteristics which undermine the rationality of using an apportionment formula. The Coca-Cola Company has two such characteristics.

The first is the unique position sugar occupies in the business of The Coca-Cola Company. The influence of sugar costs on the pricing

structure contributes to distortion in the sales factor when apportioning income of The Coca-Cola Company. Sugar exercises this influence because a different product is sold overseas from that sold in the United States. Abroad, The Coca-Cola Export Corporation, a subsidiary of The Coca-Cola Company, manufactures and sells concentrate (the beverage formula without sugar or water). Shipping concentrate is far easier and cheaper than shipping bulkier syrup. At home, Coca-Cola USA, a division of The Coca-Cola Company, sells syrup (the beverage formula with sugar and water).

Another unique characteristic of The Coca-Cola Company's business is the company's relationship with United States bottlers. In 1921, a contract between The Coca-Cola Company and United States bottlers froze the price of syrup. Until recently, the only price adjustment allowed has been an increase to cover escalating sugar costs. The United States District Court for the District of Delaware perpetualized this contract by a consent decree. As a result, the unit price of a gallon equivalent of product is much higher in the United States than in foreign countries. The cost of sugar is largely responsible for the price difference.

Sugar inflates not only domestic sales, but also property and payroll. Warehouses and equipment are needed for storing and shipping sugar, which is used in huge bulks. Delivering a bulkier product requires additional equipment and increases delivery costs. Additional personnel are necessary to handle sugar.

By increasing sales, property, and payroll figures, sugar contributes to distorting international income distribution. Overseas sales, property, and payroll factors are lower because no reckoning with sugar is required. Even though domestic income is lower than overseas income, individual states tax more income than was earned in the United States because domestic factors, inflated by an element not present overseas, attribute that income to state tax jurisdictions.

National economic differences and individual corporate characteristics distort the distribution of income through formulary apportionment. Still another fact adds to the distortion. Generally, a corporation's rate of return is higher abroad than domestically. Corporations expect a higher rate of profitability abroad because

business risks are higher in foreign countries, especially when the country is politically unstable. Both these facts are reflected in The Coca-Cola Company's experience abroad, as shown by the following chart:

THE COCA-COLA COMPANY AND SUBSIDIARIES
COMPARISON OF THE
RELATIONSHIP BETWEEN DOLLARS OF
SALES, PAYROLL, AND PROPERTY

Amount Required to Produce $1.00 of Net Income

		Sales	Payroll	Property (Cost)
1975	Domestic	9.94	.93	4.29
	Foreign	4.38	.55	1.80
1976	Domestic	8.96	.88	4.07
	Foreign	4.56	.57	1.85
1977	Domestic	9.52	.97	4.63
	Foreign	4.53	.53	1.80
1978	Domestic	11.90	1.18	5.79
	Foreign	4.57	.52	1.67

As the chart reveals, producing a dollar of income requires, for the most part, twice the sales, payroll and property in the United States as in foreign markets. In 1978, three times the property was required. The rate of profitability is much higher abroad. The high domestic factors used in an apportionment formula, unadjusted for rates of profitability, provide the states with much more taxable income than was earned within the borders of the United States.

Economic and business differences which characterize the world market defeat formulary apportionment as a fair method for taxing worldwide income. This Court has recognized that differences in operational costs and rates of profitability, if adequately proved, could defeat a state's apportionment ratio when taxing only domestic

income. *Norfolk & Western Railway Co.* v. *North Carolina*, 297 U.S. 682 at 686 (1936). When taxing worldwide income, these differences cause distortions so serious that any apportionment is unconstitutional.

A formula which requires economic consistency for its effective operation cannot produce a constitutional tax when it is stuffed with figures contrived from an inconsistent world market. This Court has broadly interpreted states' powers in matters of domestic taxation. In *Wisconsin* v. *J. C. Penney Co.*, 311 U.S. 435 at 444 (1940), this Court said:

> "A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society."

When attributing to itself income earned in the United States, a state's apportionment formula need only roughly approximate the income related to activities within its borders. *Moorman Manufacturing Co.* v. *Bair*, 437 U.S. 267 at 273 (1978). Such an approach is acceptable when dealing with the United States alone because each state by its own orderly government contributes to the orderliness of the United States as a whole and, thereby, to a business' ability to operate successfully. "Rough approximation," however, is an insufficient standard when a state attempts to tax worldwide operations. The orderliness of the marketplace in California or Kansas contributes nothing to a corporation's ability to earn a profit in Germany or Japan. More stringent standards are necessary because differences in currency values and wages do not even out over time. And, perhaps most important, stringent standards are necessary because no foreign country will accept a state's encroachment into that country's tax jurisdiction or a state's imposition of an increased tax burden on one of its corporations without retaliation.

Worldwide unitary taxation violates a taxpayer's right to due process guaranteed by the Fourteenth Amendment because it incor-

porates a formula which distorts the amount of income attributable to a taxing state. This distortion occurs because the formula treats economically distinct nations as though they are extensions of the American market place. Because foreign nations are economically distinct units and because apportionment formulas greatly distort income attribution, states imposing worldwide formulary apportionment tax income which bears no relationship to the taxpayer's intrastate activites.

Commerce Clause

Worldwide unitary taxation not only violates the Due Process Clause of the Fourteenth Amendment, but also impinges on Congress' power to regulate foreign commerce. A state statute which affects foreign commerce must meet two criteria in addition to the usual tests when determining the constitutionality of a state tax pursuant to the Commerce Clause. When foreign matters are involved, a state may not: (1) enhance the risk of multiple taxation, and (2) prevent a unified Federal approach in commercial dealings with other nations. *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U.S. 434, 446-448 (1979). States' practice of worldwide unitary taxation violates both these criteria.

First, worldwide unitary taxation is unconstitutional according to the Commerce Clause because this practice creates international multiple taxation. When a state uses worldwide unitary taxation, it includes in a taxpayer's income all income earned abroad before taxes; states do not allow credits for foreign taxes paid. This practice creates multiple taxation because foreign countries subject all income earned within their borders to taxation. A state, through worldwide unitary taxation, taxes this income again, even though in many instances the United States taxpayer was unable to repatriate all the income over which a state asserts jurisdiction. For example, in Colombia, a foreign corporation is restricted from remitting as dividends more than 20% of that corporation's registered foreign investment in Colombia. Int'l. Bur. of Fiscal Documentation, *Corporate Taxation in Latin America*, Section D, Andean Group Decision No. 24, Art. 37. A percentage of a corporation's income is effectively

blocked from repatriation, obviously to encourage a reinvestment of the blocked currency in Colombia.

The following chart shows, for The Coca-Cola Company, how much income earned in Germany was made available for duplicative taxation on one state's actual audit basis:

THE COCA-COLA COMPANY AND SUBSIDIARIES
COMPARISON OF PERCENTAGE OF INCOME APPORTIONED TO GERMANY AND SUBSIDIARIES ON ACTUAL AUDIT BASIS AND PERCENTAGE OF INCOME ON WHICH TAX WAS PAID TO GERMANY

Income Year	Percent of Germany Income on Which Foreign Income Tax Paid	Percent of Income Apportioned to Germany per Audit Basis	Percent of Total Germany Income Assigned to U.S. Locations
1967	100%	43.5%	56.5%
1968	100%	44.5%	55.5%
1969	100%	35.5%	64.5%
1970	100%	35.3%	64.7%
1971	100%	33.9%	66.1%
1972	100%	38.8%	61.2%
1973	100%	40.2%	59.8%
1974	100%	32.1%	67.9%
Total 1967-74	100%	37.0%	63.0%

For this eight-year period, the State has subjected to taxation 63% of income earned in and already taxed by Germany. Double taxation of foreign income is actual.

This Court has held that even a risk of multiple taxation provides sufficient grounds for overruling a state tax when foreign commerce is involved. *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U.S. 434 at 448 (1979). When imposing worldwide unitary taxation, the states have created more than a risk of multiple taxation — the states have made multiple taxation a reality. Foreign sovereigns have exercised their rights with respect to the income involved. The full value of income earned abroad has been subjected to another country's income tax. The facts now before the Court surpass the mere risk which invalidated the property tax in *Japan Line*, 441 U.S. at 448. Actual multiple taxation exists because a governmental entity over which this court has no authority has exercised its rights. No apportionment formula renders worldwide unitary taxation constitutional because worldwide unitary taxation subjects foreign commerce to a tax burden domestic commerce does not bear. Interstate apportionment simply cannot guarantee the absence of multiple tax burdens when foreign sovereigns are involved.

The lack of a forum for relief, which this Court recognized as a problem with respect to property taxes, also afflicts income taxes when worldwide unitary taxation is imposed. Among the nations, a system for relief of double taxation has been created by treaty. Relief from double taxation is incorporated in most United States tax conventions by a Mutual Agreement Procedure. Through this procedure, both countries agree to resolve taxation problems arising from government actions contrary to the convention. An official body, the competent authority, is appointed in each country to hear complaints arising pursuant to tax conventions. If necessary, the competent authorities of both countries attempt to negotiate a resolution of the problem. In the United States, this procedure is formalized in *Rev. Proc.* 65-17, 1965-1 C.B. 833 and *Rev. Proc.* 70-18, 1970-2 C.B. 493. Individual states of the United States are not parties to the conventions or the Mutual Agreement Procedure. Taxpayers suffering international double taxation resulting from the imposition of taxes by both a foreign sovereign and a state have no recourse to obtain the kind of relief available in tax treaties. If this Court does not invalidate worldwide unitary taxa-

tion as it invalidated the property tax in *Japan Line, Ltd.*, 441 U.S. 434, all the evils foreseen in *Japan Line* will materialize.

Among those evils is the international frustration created because worldwide unitary taxation also violates the second *Japan Line* criterion for constitutionality: a state tax cannot prevent the Federal Government from speaking with a unified voice in foreign matters. That worldwide unitary taxation has caused international frustration is made clear by negotiations over the Third Protocol amending a convention between the United States and Great Britain signed December 31, 1975. That amendment proposed the exclusion from state tax jurisdiction of income earned by corporations residing in Great Britain and related to corporations in the United States. The Department of State issued a report on the Third Protocol specifically indicting state taxation of foreign source income:

> "* * * This limitation is directed at the practice of a few States which are attempting to take into account the income on a consolidated basis of all related foreign enterprises in assessing the State income tax of a single member of the related group doing business in the State. This method of assessment, which includes the burden of producing worldwide records of all of the affiliated companies, has raised many objections by our treaty partners and we are now seeking to deal specifically with this problem in our treaties."
>
> (2 Tax Treaties (CCH) ¶ 8103DC)

Although the treaty was approved without the state tax limitation, British displeasure with worldwide combination has not ended.

The treaty, without its state tax limitation, was again recently discussed in Parliament. Mr. Michael Grylls, a Member of Parliament, noted the failure of the United States government to deliver a statutory prohibition of worldwide unitary taxation — an action promised in return for approving the above-discussed treaty. Mr. Grylls asserted that the Federal Government should not relinquish to the states the Federal prerogative in determining international

economic policy. Mr. Grylls then urged retaliatory taxation in the following language:

> "Where does that leave us? Parliament has been patient since 1975. This short debate gives us the opportunity to make it crystal clear to the United States Government that we cannot continue to accept the use of combined worldwide reporting systems by individual States, while the United States Government have agreed in over 40 treaties not to use it. We are not alone in our opposition. Recently there have been treaties between the United States and France and Canada. The European Community on behalf of its member States has presented two successive demarches to the United States Government seeking a solution to the problem.
>
> We have been patient because we are dealing with friends. We took our friends on trust. Unfortunately, in this instance our friends have not delivered. The only thing left to the British House of Commons — there will be increasing pressure on us to do this — is for us to take our own legislative action to apply a combined world-wide reporting system to United States companies that operate in Britain."
>
> *Brit. Firms Overseas* (Taxation), Apr. 27, 1982, at 825.

Objections to worldwide unitary taxation have also been raised by the Confederation of British Industry. Mr. Bryan Rigby, Deputy Director-General condemned worldwide unitary taxation as follows:

> "We have always argued that unitary taxation is a particularly obnoxious levy. It means some companies will be taxed twice for the same operation. At least 50 British companies with household names — including British American Tobacco, Cadbury Schweppes, Imperial Chemical Industries, Reckett & Coleman, and Unilever — are involved, as well as dozens of French, German, Italian, Dutch and other European multinationals."
>
> (Ins. for Int'l Research, *The Eur. and Middle East Tax Rep.*, April 16, 1982, at 1, col. 2.)

Although the international outcry against worldwide unitary taxation may be silenced by limiting its use only against domestic

parents, such a decision would violate the Equal Protection Clause of the Fourteenth Amendment. Even though the equal protection guarantee binds states to "no iron rule of equality" when exercising their taxing power, *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522 at 526 (1959), state taxing power is not limitless. Classifications must be reasonable and must fairly and substantially relate to a legitimate state goal. All persons similarly situated must be treated alike. *Allied Stores of Ohio*, 358 U.S. at 527; *Royster Guano Co.* v. *Virginia*, 253 U.S. 412 at 415 (1920).

Limiting the application of worldwide unitary taxation would cause unequal treatment of corporate citizens similarly situated. Two corporations engaged in the same business, operating in the same state, and organized under the same laws would bear unequal tax burdens solely because one would have a foreign parent. This Court has never sanctioned lineal descendency as a rational basis for unequal treatment. Such a classification is inherently arbitrary.

In addition, such classification bears no rational relationship to a legitimate state goal. A tax system which places a domestically headquartered corporation at a competitive disadvantage is completely irrational. Import tariffs are frequently imposed to protect domestic industry. Allowing states to impose higher tax burdens on a domestically pedigreed corporation directly conflicts with the Federal policy of protecting homegrown industry. A state can serve no legitimate end by alleviating the state tax burdens of foreign-based industry at the expense of domestic industry.

The imposition of worldwide unitary taxation violates the Commerce Clause because actual multiple taxation at the international level is precipitated. This Court has acknowledged its lack of power to ensure fair apportionment when the taxing power of a foreign sovereign is an element contributing to multiple taxation. The creation of multiple taxation and the lack of a competent forum to obtain relief are sufficient grounds for invalidating worldwide unitary taxation. Further, worldwide unitary taxation prevents the Federal government from speaking with one voice in international commercial policy. Foreign countries cannot accept the word of the Federal government in tax treaty negotiations because states, through

worldwide unitary taxation, subvert commercial policies to which the Federal government has agreed. Exempting foreign based industry from worldwide unitary taxation is unacceptable because equal protection guarantees would be violated. The only practical solution is eliminating the worldwide unitary method as a legitimate means of taxation.

CONCLUSION

For all the foregoing reasons, The Coca-Cola Company urges this Court to reverse the California Court of Appeal by declaring the Container Corporation of America to be a nonunitary business and by holding unconstitutional the worldwide unitary method of state income taxation.

Respectfully submitted,

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